

South Africa

Matrimonial Affairs Act, 1953

Act 37 of 1953

Legislation as at 1 December 1993

FRBR URI: /akn/za/act/1953/37/eng@1993-12-01

There may have been updates since this file was created.

PDF created on 13 April 2024 at 08:33.

[Check for updates](#)



About this collection

The legislation in this collection has been reproduced as it was originally printed in the Government Gazette, with improved formatting and with minor typographical errors corrected. All amendments have been applied directly to the text and annotated. A scan of the original gazette of each piece of legislation (including amendments) is available for reference.

This is a free download from LawLibrary and is presented in collaboration with the African Legal Information Institute, the Judicial Institute for Africa and the Laws.Africa Legislation Commons, a collection of African legislation that is digitised by Laws.Africa and made available for free.

www.lawlibrary.org.za | info@lawlibrary.org.za

www.laws.africa | info@laws.africa

There is no copyright on the legislative content of this document.

This PDF copy is licensed under a Creative Commons Attribution 4.0 License (CC BY 4.0). Share widely and freely.

Matrimonial Affairs Act, 1953

Contents

1. *** 1

2. *** 1

3. *** 1

4. *** 1

5. Guardianship and custody of minors 1

6. *** 2

7. *** 2

8. *** 3

9. *** 3

10. *** 3

11. Short title 3

South Africa
Matrimonial Affairs Act, 1953
Act 37 of 1953

Published in Government Gazette 5170 on 28 October 1953

Assented to on 1 October 1953

Commenced on 28 October 1953

[This is the version of this document as it was from 1 December 1993 to 28 February 1994.]

[Amended by [General Law Further Amendment Act, 1962 \(Act 93 of 1962\)](#) on 4 July 1962]

[Amended by [Maintenance Act, 1963 \(Act 23 of 1963\)](#) on 22 January 1965]

[Amended by [Matrimonial Affairs Amendment Act, 1966 \(Act 13 of 1966\)](#) on 1 June 1966]

[Amended by [Matrimonial Affairs Amendment Act, 1976 \(Act 13 of 1976\)](#) on 24 March 1976]

[Amended by [Divorce Act, 1979 \(Act 70 of 1979\)](#) on 1 July 1976]

[Amended by [Matrimonial Property Act, 1984 \(Act 88 of 1984\)](#) on 1 November 1984]

[Amended by [General Law Fourth Amendment Act, 1993 \(Act 132 of 1993\)](#) on 1 December 1993]

(English text signed by the Governor-General.)

ACT

To amend the law relating to the property rights of spouses, to orders for maintenance, to the guardianship and custody of minors and to divorce.

BE IT ENACTED by the Queen's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

1. ***

[section 1 repealed by section 10 of [Act 132 of 1993](#)]

2. ***

[section 2 repealed by section 10 of [Act 132 of 1993](#)]

3. ***

[section 3 substituted by section 1 of [Act 13 of 1976](#) and repealed by section 37 of [Act 88 of 1984](#)]

4. ***

[section 4 repealed by section 16 of [Act 23 of 1963](#)]

5. **Guardianship and custody of minors**

- (1) Any provincial or local division of the Supreme Court or any judge thereof may, on the application of either parent of a minor whose parents are divorced or are living apart, in regard to the custody or guardianship of, or access to, the minor, make any order which it may deem fit, and may in particular, if in its opinion it would be in the interests of such minor to do so, grant to either parent the sole guardianship (which shall include the power to consent to the marriage of the child) or sole custody of the minor, and the court may order that, on the predecease of the parent to whom

the sole guardianship of the minor is granted, a person other than the surviving parent shall be the guardian of the minor, either jointly with or to the exclusion of the surviving parent.

[subsection (1) substituted by section 16(a) of Act 70 of 1979]

- (2) An order under subsection (1) in regard to a minor whose parents are living apart a-hall, if the parents become reconciled and live together again as husband and wife, lapse with effect from the date on which the parents commence to live together again.

[subsection (2) substituted by section 16(b) of Act 70 of 1979]

- (3) Subject to any order of court—
- (a) a parent to whom the sole guardianship or custody of a minor has been granted under subsection (1), or the Divorce Act, 1979, or a father or a mother upon whom a children's court has under section 60 (1) of the Children's Act, 1960 ([Act No. 33 of 1960](#)), conferred the exclusive right to exercise any parental powers in regard to a minor, may by testamentary disposition appoint any person to be the sole guardian or to be vested with the sole custody of the minor, as the case may be; and
- (b) the father of a minor to whom the sole guardianship of the minor has not been granted under subsection (1) or the Divorce Act, 1979, or upon whom a children's court has not conferred the exclusive right to exercise any parental powers in regard to the minor, shall not be entitled by testamentary disposition to appoint any person as the guardian of the minor in any other manner than to act jointly with the mother.

[subsection (3) substituted by section 2(a) of Act 13 of 1966 and by section 16(c) of Act 70 of 1979]

- (4) If the mother of a minor does not consent to the marriage of the minor, the consent of the father (whether or not he has in any proceedings been granted the sole custody of the minor), shall not be sufficient, unless he has been granted the sole guardianship of the minor.

- (5) The court or a judge may—

- (a) where a parent has appointed a guardian or custodian as provided in paragraph (a) of subsection (3); or
- (b) where a guardian has been appointed to a minor by the father, to act jointly with the mother, upon the application of the other parent, or of the guardian or mother, as the case may be, made after the death of the testator, make such order in regard to the guardianship or custody of the minor as the court or judge may deem in the interests of the minor.

- (6) If an order under section 60 of the Children's Act, 1960, is rescinded, or if an order under subsection (1) of this section or under the Divorce Act, 1979, granting the sole guardianship or custody of a minor to a parent, lapses or is rescinded or is varied in such a manner that the parent is no longer the sole guardian or vested with the sole custody of the minor, any disposition made under subsection (3)(a) shall lapse.

[subsection (6) substituted by section 2(b) of Act 13 of 1966 and by section 16(d) of Act 70 of 1979]

- (7) A wife may make any application referred to in this section, and any application to a court in connection therewith, without the assistance of her husband.

6. ***

[section 6 repealed by section 18 of Act 70 of 1979]

7. ***

[section 7 repealed by section 18 of Act 70 of 1979]

8. ***

[section 8 repealed by section 18 of Act 70 of 1979]

9. ***

[section 9 repealed by section 18 of Act 70 of 1979]

10. ***

[section 10 repealed by section 18 of Act 70 of 1979]

11. Short title

This Act shall be called the Matrimonial Affairs Act, 1953.